REMARKS

The Applicants have now had an opportunity to carefully consider the comments set forth in the Office Action that was mailed February 6, 2008. All of the rejections are respectfully traversed. Additionally, it is respectfully submitted that the finality of the rejections is premature and/or that the Office Action is not completely responsive. Amendment, withdrawal of the finality of the rejections, reexamination and reconsideration are respectfully requested.

THE OFFICE ACTION

In the Office Action that was mailed February 6, 2008:

the grounds of rejection were characterized as new (page 16) and a response to the arguments presented in Applicant's Amendment A was not provided;

claims 1, 2, 4-8, 10-13, 16-21, 23-27 and 29-32 were rejected under 35 USC §103(a) as being unpatentable over an allegedly archived webpage referred to as "Call Center Plus" (http://web.archive.org/web/20030210080601/callcenterplus.com/pricing.html), hereinafter "CCP" in view of U.S. Patent No. 6,301,471 B1 to Dahm et al. ("Dahm");

claims 3, 9, 22 and **28** were rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm and further in view of U.S. Patent Application Publication No. 2004/0043754 A1 by Whewell ("Whewell").

claims 14, 15, 33 and **34** were rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm and further in view of U.S. Patent No. 7,324,963 B1 to Ruckart ("Ruckart");

claims 35 and **37-40** were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0009761 A1 by Money ("Money") in view of Dahm;

claim 36 was rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm and further in view of Whewell;

claims 43 and **44** were rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm and further in view of Ruckart;

claims 41 and **45** were rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm and further in view of CCP; and

claims 46 and **47** were rejected under 35 USC §103(a) as being unpatentable over a combination of four documents including Money, Dahm, CCP and Ruckart.

The Finality of the Rejections Is Premature and/or the Office Action Is Not Completely Responsive

Independent **claims 1, 20** and **35** were previously amended to recite additional subject matter. However, it is respectfully submitted that the additional subject matter included in the independent claims is related to subject matter recited in dependent claims thereof in such a way as to not require a new search or new grounds of rejection. That is, for example, if the grounds of rejection applied to dependent **claims 13, 14** and/or **15** in the previous Office Action had been adequate, then those grounds could have been applied to the rejection of **claim 1** in the present Office Action. To the extent that the Office considers the rejection of **claim 1** in the present Office Action to be based on new grounds, the new grounds were not necessitated by the Applicants' amendment and the finality of the rejections should be withdrawn.

On the other hand, if the Office considers the present rejections of the independent claims to be old since they are only based on previously cited documents, then the Office should have responded to Applicants' arguments and the present Office Action is not completely responsive and the finality of the present rejection should be withdrawn and a responsive Office Action should be issued.

In this regard, it is noted that Section 707.07(f) of the MPEP indicates that in order to provide a complete application file history and to enhance the clarity of the prosecution history record, an Examiner **must** provide clear explanations of all actions taken by the Examiner during prosecution of an application and that where the Applicant traverses any rejection, the Examiner should, if he or she repeats the rejection, take note of the Applicants' argument and **answer the substance** of it.

MPEP §706.07(a) indicates that under present practice, second or any subsequent actions on the merits shall be made final, **except where the Examiner introduces a new ground of rejection that is neither necessitated by the Applicant's amendment of the claims,** nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR §1.97(c) with the fee set forth in 37 CFR §1.17(e).

As indicated above, to the extent that the Office considers the rejections of the independent claims to be based on new grounds (because new portions of the cited

documents are referred to), the new grounds were not necessitated by the Applicants' amendment.

Moreover, **none of the dependent claims** were amended. **Accordingly, the new grounds of rejection presented with regard to the dependent claims were clearly not necessitated by Applicants' amendment**.

For example, **claims 3, 9, 22** and **28** were previously rejected in view of CCP and Money and are now rejected in view of CCP, Dahm and Whewell. Even if the inclusion of Dahm in the rejection could be attributed to the amendment to the independent claims, the reliance on Whewell is clearly directed at subject matter recited in the dependent claims themselves. That is, it is respectfully submitted that Whewell is relied on because of an acknowledged inadequacy of the previous rejections based on citation to Money. Accordingly, the new grounds of rejection of **claims 3, 9, 22** and **28 was not necessitated by Applicants' amendment**. Accordingly, the rejection should not have been made final. The finality of the rejection of **claims 3, 9, 22** and **28** is a **clear error** of the Office Action and **withdrawal of the finality if respectfully requested**.

In the previous Office Action, **claims 14** and **33** were rejected in view of CCP and Money and **claims 15** and **34** were rejected in view of CCP and Dahm. However, in the present Office Action, **claims 14, 15, 33** and **34** are rejected in view of CCP, Dahm and Ruckart. Ruckart is clearly relied on for subject matter recited in the dependent claims themselves. Most clearly in the case of **claims 15** and **34**, which were previously rejected based on only CCP and Dahm, the new citation to Ruckart was not necessitated by the amendments to **claims 1** and **20**. Accordingly, the finality of the rejection of **claims 15** and **34** is premature. Furthermore, in the explanation of the rejection of all these claims, including, **claims 14** and **33**, Ruckart is clearly cited for subject matter recited in the dependent claims themselves. Accordingly, the new grounds of rejection of **claims 14** and **33** were not necessitated by the Applicants' amendment.

For at least the foregoing reasons, rejections of **claims 14, 15, 33** and **34** should not have been made final. Accordingly, the finality of the rejections of **14, 15, 33** and **34** represent a **clear error** of the Office Action and **withdrawal of the finality** is respectfully requested.

Claims 35 and **37-40** were previously rejected in light of CCP and Money. In the present Office Action, **claims 35** and **37-40** are rejected in view of Money and

Dahm. It is respectfully submitted that CCP was dropped as a reference against **claim 35** because CCP clearly does not disclose a system, and **claim 35** is a system claim. Accordingly, the rejection of **claims 35** and **37-40** was necessitated by the inappropriateness of the previous rejection and **not by Applicants' amendment**.

For at least the foregoing reasons, the finality of the present rejection represents a **clear error** of the Office Action and **withdrawal of the finality of the rejection** is respectfully requested.

Claim 36 was previously rejected in light of CCP and Money. In the present Office Action, **claim 36** is rejected in view of Money, Dahm and Whewell. Again, it is respectfully submitted that CCP is no longer being applied against **claim 36** because CCP clearly does not disclose a system, and the new rejection based on Money was necessitated by the inappropriateness of the original rejection and not on any amendment made by the Applicants. Furthermore, the citation to Whewell is clearly directed at subject matter recited in **claim 36** itself and was necessitated by the inappropriateness of the previous rejection and **not by any amendment** to **claim 35**.

Accordingly, the finality of the rejection of **claim 36** represents a **clear error** of the Office Action and withdrawal of the finality of the rejection is respectfully requested.

Claim 43 was previously rejected in view of CCP and Money. **Claim 44** was previously rejected in view of CCP, Money and Dahm. In the present Office Action, **claims 43** and **44** are rejected in view of Money, Dahm and Ruckart. It is respectfully submitted that the removal of CCP as a reference was necessitated by the fact that CCP does not disclose or suggest a system and **not by any amendment** made by the Applicants. Additionally, the new citation to Ruckart is clearly directed at subject matter recited in **claims 43** and **44** themselves and was not required by any amendment to **claim 35**. Accordingly, the finality of the rejection of **claims 43** and **44** represents a **clear error** of the Office Action and **withdrawal of the finality** is respectfully requested.

Claim 45 was previously rejected in light of CCP, Money and Dahm. In the present Office Action, **claim 45** is rejected in light of Money, Dahm and CCP. To the extent that this is considered a new grounds of rejection, it is respectfully submitted that the new grounds were not necessitated by any amendment of the Applicants. To the extent that this is considered an old rejection, the present Office Action should have provided a response to the arguments presented in Applicants' Amendment A.

For at least the foregoing reasons, the rejection of **claim 45** represents a **clear error** of the Office Action and **withdrawal of the finality of the rejection** is respectfully requested.

In the previous Office Action, **claim 46** was rejected in view of CCP and Money. **Claim 47** was rejected in view of CCP, Money and Dahm. In the present Office Action, **claims 46** and **47** are rejected in view of four documents including Money, Dahm, CCP and Ruckart. It is respectfully submitted that at least the new reliance on Ruckart, which is cited for subject matter clearly recited in **claims 46** and **47** and is not related to the amendment to **claim 35**. Accordingly, the reliance on at least this new ground of rejection **was not necessitated by any amendment** made by the Applicants.

Accordingly, the finality of the rejection of **claims 46** and **47** represents a **clear error** of the Office Action and withdrawal of the finality and the issuance of a new, fully responsive Office Action is respectfully requested.

The Present Application

By way of brief review, the present application is related to systems and methods for providing network support for graduated airtime billing. That is, adaptations to portions of a mobile communications network are described. Where prior art systems charge a high rate for airtime in excess of a subscriber's calling plan limits, the subject matter of the present application provides means for charging progressively lower rates for airtime in excess of a subscriber's calling plan limits. Moreover, the present application provides means for rewarding customer loyalty by providing increased discounts based on a time period the subscriber has been a customer, and/or provides means for encouraging calling plan upgrading by considering the cost of the base calling plan subscribed to by the subscriber and providing increased discounts for airtime consumed in excess of the allocation in higher cost plans (e.g., **original claims 13-15, 17-18, 32-34, 41-46**).

The Newly Cited References

The newly cited document by Whewell allegedly discusses a variable billing plan which calculates the lowest possible invoice amount to be billed to a consumer of cellular services from a variety of billing options. The Office Action relies on Whewell for disclosure of the subject matter recited in **claims 3, 9, 22, 28** and **36**.

However, Whewell is silent with regard to categories of air time. Accordingly, even if Whewell could be construed as disclosing charging a flat fee for a first category of airtime consumed by the subscriber up to the first threshold airtime amount as recited in **claim 3** (which is disputed), Whewell does not disclose or suggest charging a flat fee for second category airtime consumed by the subscriber up to a second category first threshold airtime amount as recited in **claim 9**. Furthermore, Whewell provides no disclosure of a system and includes no figures of any kind. Accordingly, Whewell does not disclose any means for charging a flat fee for a first category airtime as recited in **claim 22** or any means for charging second category airtime as recited in **claim 28.** Moreover, Whewell cannot disclose or suggest the means for charging disclosed in the present application and recited by reference thereto under 35 USC §112, sixth paragraph, in **claims 22** and **28**. Additionally, since Whewell does not disclose or suggest any system components, Whewell **cannot** disclose or suggest the graduated biller recited in **claim 36**.

Furthermore, the method disclosed by Whewell defeats the purpose of having different plans that provide flat fees for different threshold levels of minutes by providing the customer with the benefits of the more expensive plans without actually subscribing to the more expensive plans. Accordingly, since Whewell is logically inconsistent in both offering the consumer a selection of plans while at the same time eliminating any incentive for the consumer to choose anything but the lowest priced plan, **one of ordinary skill in the art would not look to Whewell for any purpose**.

Ruckart allegedly discloses methods and systems for offering bundled goods and services (title). The Office Action asserts that the Abstract and three lines from column 3 of Ruckart discloses a method and apparatus for providing discounted billing rates to customers for wireless telephone service.

However, the Abstract is silent with regard to wireless telephone service. Instead, the Abstract of Ruckart indicates that customers can select a combination of the offered goods and services offered by a vendor, rather than choosing from among a few, bundled packages.

The cited portion of column 3 indicates that goods, services or the combination of goods and services are herein referred to as products. Such products may include telephones, wireless communication devices, local telephone services, long distance telephone services, wireless telephone services, paging services and internet services.

The Office Action also appears to cite lines 51-56 of column 3. This portion of column 3 indicates that a first webpage displays a base price for each product, along with a message indicating that any combination of products is available to the customer. Also incorporated into this message is the indication that, if more than one product is selected, a varying progressive discount from the base prices will be applied to the selections. Further, the message indicates that the discount will be greater if more expensive products are selected.

The Office Action cites these portions of Ruckart in an attempt to explain the rejections of **claims 14, 15, 33, 34, 43, 44, 46,** and **47**. However, Ruckart does not disclose or suggest the subject matter of these claims. For example, **claim 14** recites determining the first discounted billing rate based on a function of the calling plan subscription cost of the subscriber that generates larger discounts for higher cost subscription plans. Ruckart does not disclose or suggest higher discounts for higher cost subscription plans. For example, see Fig. 4 which depicts three cellular service plans associated with discount rates according to the number of items purchased (reference numerals 405, 407, 409). These discounts are applied to the base cost of the items and **not** to a billing rate for a first category of air time that is less than the first reference rate as recited in **claims 1** and **14**.

Furthermore, **claim 15** recites determining the first discounted billing rate based on a function of the **time period the subscriber has been a customer** and the calling plan subscription cost of the subscriber that generates **larger discounts for longer customer time periods** and higher cost subscription plans. Ruckart clearly does not disclose or suggest the subject matter of **claim 15**.

For at least the foregoing reasons, the rejections based on Whewell and Ruckart represent **clear errors** of the Office Action.

The Previously Cited Documents

The primary reference of the Office Action to CCP is a webpage providing a price list for a telephone answering service, which provides rates for the time of telephone operators and **not for airtime**, such as airtime associated with mobile telecommunication services. CCP does not disclose a system and does not disclose a method. CCP simply presents a price list. CCP mentions the word --loyal--. However, CCP does not disclose or suggest determining a first discounted billing rate for a first category of airtime that is less than a first reference rate based on a

function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans. CCP simply indicates a belief that if a customer is happy with their service, they will become a loyal, happy customer.

Dahm allegedly discloses a system and method that allows mobile subscribers who have been identified as being likely candidates for churning, to efficiently, visually and interactively, review **an offer** for a mobile service plan better meeting the subscriber's needs (Abstract). Even if Dahm discloses a system or method for **offering** different or better service plans to a subscriber, Dahm does not disclose or suggest providing a discount within a subscriber's current plan that increases the longer the subscriber is a subscriber. Furthermore, Dahm does not disclose or suggest providing increased discounts for airtime consumed above a threshold amount wherein the discounts are a function of a determined subscription plan cost and provide increased discounts for higher cost plans.

In this regard, it is noted that in citing Dahm the Office Action makes assertions about what Dahm discloses. However, the Office Action does not assert that Dahm discloses elements recited in the claims of the present application.

Accordingly, for the foregoing additional reasons, rejection of the claims of the present application based on CCP and/or Dahm represent **clear errors** of the Office Action.

The Claims Are Not Obvious

Claims 1, 2, 4-8, 10-13, 16-21, 23-27 and **29-32** were rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm.

In an effort to explain the rejections of **claims 1** and **20**, the Office Action makes assertions about CCP disclosing a method for charging a subscriber including several determination steps and charging activities. However, CCP is a price list and does not disclose a method or a system.

Additionally, the Office Action stipulates that CCP does not disclose charging a subscriber for airtime or that a discounted billing rate is based on a function of customer loyalty.

In regard to these, the Office Action appears to rely on Dahm and asserts that Dahm discloses a method and system to provide subscriber loyalty and retention techniques, that Dahm discloses offering better rates in exchange for long term commitment to customers that are likely to churn, that Dahm discloses the likelihood

of a customer churning increases with each passing month, and that Dahm discloses the time used by a subscriber of the system of Dahm as airtime.

However, **claims 1** and **20** do not include steps of offering better rates in exchange for long term commitments. **Claims 1** and **20** do not recite elements that address churning or increasing churning each passing month. Instead, **claim 1** recites: determining a first discounted billing rate for the first category of airtime that is less than the first reference rate based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans and charging the first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount.

The Office Action does not even assert that CCP and Dahm disclose this subject matter from **claim 1**.

The Office Action also stipulates that CCP does not disclose the means recited in **claim 20** (in the words of the Office Action "the means to perform the method of **claim 1**"). Accordingly, the Office Action appears to rely on Dahm for this disclosure. However, in this regard, the Office Action simply asserts that Dahm discloses means for managing subscriber's account information.

The intent of the Office Action is not clear on this point because **claim 20** does not recite a means for managing a subscriber's account information. Instead, **claim 20** recites: means for determining a first reference billing rate for a first category of airtime, means for determining a first threshold airtime amount, means for determining a quantity of first category airtime consumed by the subscriber, means for determining a first discounted billing rate for the first category of airtime that is less than the first reference rate wherein the first discounted billing rate is based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans and means for charging the first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount.

Furthermore, to support the assertion that Dahm discloses means for managing subscriber's account information, the Office Action vaguely cites over six columns worth of disclosure (column 4, line 49-column 9, line 51, Fig. 1, Fig. 2a and Fig. 2b). In this regard, it is noted that 37 CFR §1.104(c)(2) requires that "when a reference is complex or shows or describes inventions other than that claimed by the Applicant, **the particular part relied on must be designated as nearly as**

practicable". It is respectfully submitted that if the Office did not find it practicable to identify where Dahm describes means for determining a first reference billing rate for a first category of airtime; where Dahm describes means for determining a first threshold airtime amount; where Dahm describes means for determining a quantity of first category airtime consumed by the subscriber; where Dahm describes means for determining a first discounted billing rate for the first category of airtime that is less than the first reference rate wherein the first discounted billing rate is based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans; or where Dahm describes means for charging the first discounted billing rate for at least some first category of airtime consumed by the subscriber in excess of the first threshold airtime amount, with anymore specificity than somewhere within a range of over six columns of text and three Figures, **it is because Dahm does not disclose or suggest such means**.

Additionally or alternatively, it is respectfully submitted that even if Dahm could be construed as disclosing or suggesting some means for performing these functions, Dahm does not disclose **the** means for performing these functions disclosed in the present application and recited under 35 USC §112, sixth paragraph, in **claim 20** of the present application.

For at least the foregoing reasons, the rejection of **claims 1** and **20** represent **clear errors** of the Office Action and **withdrawal of the finality of the rejections** as well as **withdrawal of the rejections** is respectfully requested.

Furthermore, it is respectfully submitted that there is **no motivation** in the art to combine the price list of CCP with the disclosure of Dahm. In this regard, it is respectfully submitted that far from suggesting a combination with Dahm, the assertion in CCP that "We know if you are happy with our service, you will become a loyal happy customer." teaches away from such a combination. CCP relies on providing good service as a means for encouraging loyal happy customers. Accordingly, there is no need for CCP to provide an online churning reduction loyalty system.

Moreover, there is no need for CCP to provide techniques that are suitable for mobile devices with small screens and limited key pad communication that allows mobile subscribers who have been identified as being likely candidates for churning to efficiently, visually and interactively review an offer for a mobile service plan better meeting the subscriber's needs (Abstract of Dahm).

CCP is unrelated to mobile services. Dahm allegedly reduces the susceptibility of customers to churning on its own (e.g., column 2, lines 7-10).

Accordingly, there is **no motivation to combine** CCP with Dahm.

It is respectfully submitted that the assertion that it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the billing method as disclosed by CCP with apparatus to perform billing functions as disclosed by Dahm in order to implement the billing method is specious.

First, CCP does not disclose a billing method.

Second, the Office has not identified an element of Dahm that the Office considers to be an apparatus to perform billing functions.

Third, if Dahm could be construed as disclosing an apparatus to perform billing functions, then Dahm would disclose an apparatus to perform billing functions without combination with CCP and there would be no motivation to combine Dahm with CCP.

For at least the foregoing additional reasons, **claims 1** and **20**, as well as **claims 2-19** and **21-34**, which depend respectively therefrom, are not anticipated and are not obvious in light of CCP and Dahm.

Clarification of the position of the Office and identification of elements of the system of Dahm that the Office considers to be analogous to the means recited in **claim 20** is also respectfully requested.

With regard to **claims 2** and **22**, the Office Action cites a portion of CCP. However, CCP is a pricelist and does not disclose or suggest a method or means for charging a first reference rate for an amount of first category airtime consumed by the subscriber up to a first threshold airtime amount. The time referred to in CCP is a time of an operator or team of operators and that time is consumed not by a subscriber or a customer but by callers whose calls are directed to the answering service.

For at least the foregoing additional reasons, **claims 2** and **21** are not anticipated and are not obvious in light of CCP and Dahm.

In an effort to support the assertion that CCP in view of Dahm discloses the subject matter of **claims 4** and **23**, the Office Action only cites a portion of CCP.

However, CCP is a pricelist and does not disclose a method or a means for determining a second threshold airtime amount, greater than the first threshold airtime amount, determining a second discounted billing rate for the first category of

airtime that is less than the first discount rate, and charging the second discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the second threshold airtime amount. CCP is related to a pricelist for the time of operators spent answering calls from callers and is unrelated to airtime or a second discounted billing rate therefor.

For at least the foregoing additional reasons, **claims 4** and **23**, as well as **claims 5** and **6** and **24** and **25**, which depend respectively therefrom, are not anticipated and are not obvious in light of CCP and Dahm, and the rejections thereof represent **clear errors** of the Office Action.

With regard to **claims 5, 6, 24** and **25**, the Office at once relies on CCP, and **stipulates that CCP does not disclose** the subject matter of **claims 5, 6, 24** and **25**.

Instead, the Office Action asserts: "Since CCP discloses a first and second threshold airtime amount with a first and second discounted billing rate, respectively, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the billing method and apparatus disclosed by CCP and Dahm with further threshold airtime amount and further discounted billing rates to attract customers to consume more."

However, CCP does not disclose a first and second threshold airtime amount. CCP is a pricelist and discloses prices for operator time associated with a telephone answering service. Furthermore, it is submitted that it was not obvious to the owners or managers of CCP to include third and fourth threshold operator time amounts with third and fourth airtime discounted billing rates. It is respectfully submitted that if it were obvious to include these thresholds and prices, then CCP would include those thresholds and prices.

Accordingly, the assertion that the motivation for doing so would be to attract customers to consume more is respectfully traversed. Clearly, the managers of CCP wanted to attract customers. Since the managers of CCP were not motivated to include third and fourth threshold answering service amounts and third and fourth discounted billing rates, the allegation of the Office Action that it would be obvious to one of ordinary skill to do so to attract customers to consume more is a **clear error** of the Office Action and **the Office has not met its burden of presenting a *prima facie* case of obviousness**.

For at least the foregoing additional reasons, **claims 5, 6, 24** and **25** are not anticipated and are not obvious in light of CCP and Dahm and the assertions of the Office Action to the contrary represent **clear errors**.

With regard to **claims 7** and **26**, the Office Action cites only portions of CCP. Furthermore, the Office Action asserts that CCP in view of Dahm disclose method and means for determining a first reference billing rate for a first category of airtime while **claims 7** and **26** recite a method and system with means for determining a second reference billing rate for a **second category of airtime**. CCP is unrelated to airtime. Even if CCP could be construed as disclosing two categories of time, CCP does not disclose or suggest charging a given customer for both the first category of time and the second category of time. According to the price list of CCP, the answering service uses their own toll free number to receive calls for a customer or they use the customer's toll free number to receive calls for the customer. Accordingly, CCP cannot disclose or suggest the subject matter of **claim 7**, which depends from **claim 1** and includes therefore, charging the first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount and charging the second category first discounted billing rate for at least some second category airtime consumed by the subscriber in excess of the second category first threshold airtime amount.

For at least the foregoing additional reasons, **claims 7** and **26**, as well as **claims 8-12** and **27-31**, which depend respectively therefrom, are not anticipated and are not obvious in light of CCP and Dahm and assertions of the Office Action to the contrary represent **clear errors**.

The Office Action attempts to explain the rejection of **claims 11, 12, 30** and **31** with reasoning similar to that applied to the rejections of **claims 5, 6, 24** and **25**. Accordingly, arguments similar to those submitted in support of **claims 5, 6, 24** and **25** are submitted in support of **claims 11, 12, 30** and **31**. The Office Action cites only aspects of CCP. CCP does not disclose or suggest methods or systems related to airtime. CCP is a pricelist for time spent providing telephone answering services. The Office Action stipulates that CCP does not disclose third and fourth threshold airtime amounts and third and fourth discounted billing rates. The assertions that it would be obvious to include third and fourth threshold airtime amounts and third and fourth discounted billing rates and that a motivation to do so would be to attract customers to consume more are respectfully traversed. It is respectfully submitted

that the owners or managers of CCP are the experts in what would attract customers to consume more. Since CCP does not provide third and fourth thresholds and third and fourth discounted billing rates, it is respectfully submitted that it would not be obvious to do so.

For at least the foregoing additional reasons, **claims 11, 12, 30** and **31** are not anticipated and are not obvious in light of CCP and Dahm.

The Office Action stipulates that CCP does not disclose the subject matter of **claims 13** and **32**. In this regard, the Office Action appears to rely on Dahm.

However, **the Office Action does not assert** that Dahm discloses, and the cited portions of Dahm do not disclose or suggest, a method for charging a subscriber for airtime that includes determining a time period the subscriber has been a customer and determining the first discounted billing rate based on a function of the time period the subscriber has been a customer that generates a larger discount for longer customer time periods as recited in **claim 13** or means therefore as recited in **claim 32**. In this regard, it is respectfully submitted that the assertions with regard to what Dahm discloses in column 2, column 11 and column 1 are irrelevant.

For at least the foregoing additional reasons, **claims 13** and **32** are not anticipated and are not obvious in light of CCP and Dahm.

Furthermore, the mere fact that CCP and Dahm both include the word --loyal-- in one form or another does not provide a motivation for combining subject matter from the documents. Furthermore, CCP is a price list and does not disclose a billing method as asserted by the Office Action. Moreover, the loyalty retention system allegedly disclosed by Dahm involves making offers to subscribers associated with a churn indicator that is beyond a threshold value and combining such a method with the price list of CCP does not arrive at the method recited in **claim 1** or the method recited in **claim 13** of the present application. Therefore, the Office has not met its burden of presenting a *prima facie* case of obviousness and assertions of the Office Action to the contrary represent **clear errors** of the Office Action.

For at least the foregoing additional reasons, **claims 13** and **32** are not anticipated and are not obvious in light of CCP and Dahm.

The Office Action relies on CCP for disclosure of the bulk of **claim 16**. However, CCP is a price list for telephone answering service and does not disclose

or suggest a method for charging a subscriber for airtime and arguments similar to those submitted in support of **claim 1** are submitted in support of **claim 16**.

Additionally, the Office Action stipulates that CCP does not disclose determining one or more respective discounted billing strategies for charging for airtime consumed by the subscriber in excess of one or more calling plan limits associated with a calling plan of the subscriber wherein the one or more discounted billing strategies is based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans. In this regard, the Office Action appears to rely on Dahm.

However, the Office Action does not even assert that Dahm discloses this subject matter of **claim 16**. The closest the Office Action comes to such an assertion is the assertion that Dahm discloses offering better rates in exchange for a long term **commitment** to customers that are likely to churn. However, **claim 16** does not address churn and does not recite making an offer to a customer. It is respectfully submitted that discussion of offering better rates in exchange for long term **commitments** does not disclose or suggest discounted billing strategies that are based on a function that rewards customer loyalty. The subject matter recited in **claim 16** does not require a long term commitment from a customer. Instead, the subject matter of **claim 16** rewards a customer for having **been** a customer thereby encouraging the customer to remain a customer without requiring a commitment.

For at least the foregoing reasons, **claim 16**, as well as **claims 17-19**, which depend therefrom, is not anticipated and is not obvious in light of CCP and Dahm.

Additionally, there is no motivation in the art other than that which can be gleaned from the present application to combine CCP and Dahm. Furthermore, making such a combination does not arrive at the subject matter of the present application. The motivation alleged by the Office Action, "to retain existing subscribers and increase profit by retaining subscribers", is allegedly achieved by Dahm on its own. Accordingly, this does not motivate a combination with CCP. Furthermore, if it were obvious to make such a combination, the owners or managers of CCP would have done so.

For the foregoing additional reasons, **claim 16,** as well as **claims 17-19**, which depend therefrom, is not anticipated and is not obvious in light of CCP and Dahm.

With regard to **claims 17** and **18**, the Office Action only cites portions of CCP. However, CCP does not disclose or suggest selecting one or more airtime consumption thresholds for each of the one or more airtime categories and CCP does not disclose or suggest calculating one or more discounted billing rates associated with the one or more airtime consumption thresholds. Additionally, **claim 18** has been amended and now recites *inter alia*: --the functions selected to generate larger discounts for at least one of longer customer time periods and higher cost subscription plans--. The Office Action does not even assert that CCP (even in combination with Dahm) discloses a function selected to generate larger discounts for longer customer time periods and higher cost subscriptions plans.

For at least the foregoing additional reasons, **claims 17** and **18** are not anticipated and are not obvious in light of CCP and Dahm and assertions of the Office Action to the contrary represent **clear errors**.

With regard to **claim 19**, the Office Action stipulates that CCP does not disclose the claimed subject matter and appears to rely on Dahm.

However, the cited portions of Dahm (parts of columns 7 and 8 and 13) do not refer to call detail records. Furthermore, even if the reference to stored billing records in the cited portion of column 13 could be construed to be a reference to call detail records (which is disputed) disclosure of analyzing stored billing records to develop a churn susceptibility index for a subscriber does not disclose or suggest determining one or more airtime amounts comprises processing call detail records generated by calls associated with a subscriber during a billing period as recited in **claim 19** and assertions of the Office Action to the contrary represent **clear errors**.

For at least the foregoing additional reasons, **claims 19** is not anticipated and is not obvious in light of CCP and Dahm.

Furthermore, there is no motivation to combine CCP and Dahm other than that which can be gleaned from the present application. CCP is a price list associated with a telephone answering service and there is no indication in the art that call detail records associated with a call answering service would provide information for detecting customers who are likely to churn. For example, there is no reason to believe that call detail records associated with a call answering service would identify "opportunities to pay a lower rate, chances to get something for free and/or service dissatisfaction" (column 1, lines 44-46 of Dahm) associated with the call answering service of CCP.

For at least the foregoing additional reasons, **claim 19** is not anticipated and is not obvious in light of CCP and Dahm.

Claims 3, 9, 22 and **28** were rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm and Whewell.

However, the Office has not met its burden of presenting a *prima facie* case of obviousness in this regard. The Office Action asserts that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify CCP with Whewell to charge a flat fee up to a first threshold and a rate per minute for service used in excess of the threshold level in order to increase consumer loyalty to the service provider. However, this assertion is respectfully traversed.

It is respectfully submitted that the owners and managers associated with CCP did not find it obvious to modify CCP to charge a flat fee up to a first threshold to increase consumer loyalty to CCP. As pointed out by the Office Action, customer loyalty was a consideration of the owners or managers of CCP. However, they indicated that customer loyalty would be earned by ensuring that the customer is happy with the telephone answering service provided by the operators of CCP. It is respectfully submitted that if it was obvious to charge a flat fee up to a first threshold in order to increase customer loyalty, then CCP would offer a flat fee up to a threshold, and it does not.

For at least the foregoing reasons, **claims 3, 9, 22** and **28** are not anticipated and are not obvious in light of CCP, Dahm and Whewell.

Additionally, **claims 9** and **22** recite a method that includes and a system with means for charging a flat fee for second category airtime consumed by the subscriber up to the second category first threshold airtime amount. The Office Action does not even assert that CCP, Dahm and Whewell disclose or suggest charging or means for charging a flat fee for second category airtime (e.g., night and weekend minutes versus a first category, such as weekday or peak airtime). Additionally, it is respectfully submitted that CCP, Dahm and Whewell do not disclose or suggest charging a flat fee or means for charging a flat fee for second category airtime consumed by the subscriber up to second category first threshold airtime amount.

For at least the foregoing additional reasons, **claims 9** and **28** are not anticipated and are not obvious in light of CCP, Dahm and Whewell.

Claims 14, 15, 33 and **34** were rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm and Ruckart.

However, **claims 14** and **15** recite methods for charging a subscriber for airtime. The method of **claim 14** includes determining a calling plan subscription cost of the subscriber and determining a first discounted billing rate based on a function of the calling plan subscription cost of the subscriber that generates larger discounts for higher cost subscription plans.

The Office Action alleges that CCP in view of Dahm discloses determining a discounted billing rate based on a time period the subscriber has been a customer and generates larger discounts for longer customer time periods and higher cost subscription plans because Dahm discloses offering better rates **in exchange for longer term commitments** to customers that are likely to churn and because Dahm discloses a likelihood of a customer churning increases with each passing month.

However, it is respectfully submitted that disclosure that a customer is more likely to churn with each passing month is completely unrelated to a method for charging a customer for airtime. Determining a first discounted billing rate based on a function of the calling plan subscription cost that a subscriber currently has is not disclosed or suggested by disclosure of offering better rates **if a customer will** make a longer term commitment.

Ruckart discloses increasing discounts with the bundling of more items. The cited Abstract is silent with regard to wireless telephone services. Lines 33-36 of column 3, cited by the Office Action, indicate that the goods or services discussed by Ruckart may include telephones, wireless communication devices, local telephone services, long distance telephone services, wireless telephone services, paging services, and internet services. Lines 51-56 of column 3 indicate that a webpage can display a base price for each product along with a message indicating that any combination of products is available to the customer. Also incorporated into this message is the indication that, if more than one product is selected, a varying progressive discount from the base prices will be applied to the selections. Further, the message indicates that the discount will be greater if more expensive products are selected.

None of this discloses or suggests a method of charging a customer for airtime that involves determining a first discounted billing rate for a first category of airtime that is less than a first reference rate based on a function that at least one of

rewards customer loyalty and encourages subscription to higher cost subscription plans wherein that determination of a first discounted billing rate for the first category of airtime includes determining a calling plan subscription cost of the subscriber (i.e., that is determining a calling plan subscription cost that the subscriber already subscribes to) and determining a first discounted billing rate based on a function of that calling plan subscription cost that generates larger discounts for higher cost subscription plans. That is, it is respectfully submitted that disclosure of offering discounts in order to encourage bundling more expensive packages, even in combination with disclosure of offering better rates if a customer will commit to longer term contracts, does not disclose or suggest determining a cost of a subscription that a subscriber currently has and determining a first discounted billing rate based on a function of a calling plan subscription cost without requiring bundling as is recited in **claim 14**. Furthermore, the discounts of Ruckart related to cellular service are applied to the base plan cost and not to airtime.

Additionally, **claim 15** recites determining a time period the subscriber has been a customer, determining a calling plan subscription cost of the subscriber and determining a first discounted billing rate based on a function of the time period the customer has been a customer and the calling plan subscription cost of the subscriber that generates larger discounts for longer customer time periods and higher cost subscription plans. It is respectfully submitted that disclosure of offering better rates in the future **if a customer makes long term commitments** does not disclose or suggest determining a current discount based on a time period the subscriber has been a customer and on the calling plan subscription cost of the subscriber wherein larger discounts are provided for longer customer time periods and higher cost subscription plans.

Additionally, or alternatively, there is **no motivation** in the art to combine the price list for answering services provided by CCP and the method and systems for offering bundled goods and services other than that gleaned from the present application.

Furthermore, it is respectfully submitted that even the present application does not offer a motivation for combining systems for offering bundled goods and services with CCP and Dahm. The present application is related to discounting airtime and not discounting for bundling or agreeing to purchase long distance services and internet services and local telephone services all from the same

provider. CCP is an answering service. CCP provides only one service, the service of answering phone calls. CCP does not provide long distance telephone services or local telephone services or internet services. CCP is a price list for the time of operators and account setup and maintenance fees for a telephone answering service. Dahm allegedly discloses an online churn reduction and loyalty system. Therefore, the alleged motivation asserted by the Office Action to provide variable pricing structure that rewards customers for choosing a greater number of goods and services is specious and does not provide a motivation for combining Ruckart with CCP and Dahm. Accordingly, the only motivation is impermissible hindsight reasoning based on information gleaned from the present application.

For at least the foregoing additional reasons, **claims 14** and **15** are not anticipated and are not obvious in light of CCP, Dahm and Ruckart.

Claims 33 and **34** recite means for determining the determinations recited in **claims 14** and **15** and are not anticipated and are not obvious for at least similar reasons as presented with regard to **claims 14** and **15**.

Additionally, CCP is a price list and does not disclose or suggest any means. Ruckart depicts a server for presenting webpages to a customer so that the customer can select a combination of offered goods and services for purchase. Dahm discloses a method for transmitting offers for new subscriptions to subscribers. Even if the server 109 of Ruckart could be combined with the server 122 of Dahm, the result would be a system for presenting the table depicted in Fig. 4 of Ruckart on the cell phone or mobile device 106 of Dahm for a customer or subscriber to select bundled services and would not disclose or suggest a system for charging a subscriber for airtime already consumed according to subscriptions already subscribed for such as recited in **claims 33** and **34** of the present application.

For at least the foregoing additional reasons, **claims 33** and **34** are not anticipated and are not obvious in light of CCP, Dahm and Ruckart.

Claims 35 and **37-40** were rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm.

However, in explaining the rejection of **claim 35**, the Office Action stipulates that Money does not disclose that a discounted billing rate is based on a function of customer loyalty and by this appears to stipulate that Money does not disclose wherein the at least one discounted billing rate is determined from a function that at

least one of rewards customer loyalty and encourages subscription to higher cost subscription plans. Accordingly, the Office Action appears to rely on Dahm for disclosure of this subject matter.

However, even if the cited portions of Dahm discuss offering a subscriber a better deal before a competitor probably does (column 2, lines 38-41, cited by the Office Action), this does not disclose or suggest the graduated biller that is operative to apply at least one discounted billing rate to one or more portions of one or more total quantities of airtime wherein the at least one discounted billing rate is determined from a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans. Discussion of presenting offers or advertisements does not disclose or suggest the graduated biller for applying charges for airtime already consumed recited in **claim 35**.

Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness. Money is based on an application filed over six months after Dahm was published, and it was not obvious to Money or co-contributor McConnell to include or combine subject matter with the loyalty retention system discussed by Dahm to arrive at the subject matter of **claim 35** of the present application. If it were, Money would have disclosed such a system.

For at least the foregoing reasons, **claim 35**, as well as **claims 36-47**, which depend therefrom, is not anticipated and is not obvious in light of Money and Dahm.

Additionally, the Office Action stipulates that Money and Dahm do not disclose the subject matter of **claims 39** and **40**. In this regard, the Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify a billing system allegedly disclosed by Money and Dahm "with further threshold airtime amount and further discounted billing rates to encourage customers to utilize a cellular network". However, the Office has not met its burden of presenting a *prima facie* case of obviousness. For example, it is respectfully submitted that it was not obvious to Money or Dahm to implement such a system. If it were, they would have disclosed it.

For at least the foregoing additional reasons, **claims 39** and **40** are not anticipated and not obvious in light of Money and Dahm.

The Office Action stipulates that Money does not disclose the subject matter of **claim 42** and appears to rely on Dahm for this disclosure. However, Dahm does not disclose or suggest a graduated biller that is operative to apply a first discounted

billing rate based on a function of the time period the subscriber **has been** a customer. The cited discussion of offering a customer a better deal before a competitor does if the customer agrees to a longer term commitment does not disclose or suggest providing a discount based on a function of the time period the subscriber **has been** a customer.

For at least the foregoing reasons, the rejection of **claim 42** represents a **clear error** of the Office Action and **claim 42** is not anticipated and is not obvious in light of Money and Dahm.

Additionally, the Office has not met its burden of presenting a *prima facie* case of obviousness. If retaining existing subscribers and increasing profit by retaining subscribers were sufficient motivation to combine the loyalty retention system allegedly disclosed by Dahm with the billing system allegedly disclosed by Money and if doing so would arrive at the system recited in **claim 42**, then Money would have done so. That Money, as stipulated by the Office Action, did not do so is clear evidence that it was not obvious to do so. For at least the foregoing additional reasons, the rejection of **claim 42** represents a **clear error** of the Office Action and **claim 42** is not anticipated and is not obvious in light of Money and Dahm.

Claim 36 was rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm in further view of Whewell. However, Whewell provides a system that presents a consumer a plurality of billing schedules from which to choose, wherein each of the schedules includes a predetermined threshold level of given plan minutes and a rate per minute for each minute of service used which exceeds the threshold level, wherein each of the plurality of billing schedules offered includes a different amount of predetermined threshold level of given plan minutes, presumably to encourage the consumer to accept higher charges for higher predetermined threshold levels **and then completely removes any incentive to subscribe to higher cost plans** by providing the benefit of the higher cost plan without having to subscribe for it. That is, according to the system of Whewell, in any month where the subscriber would benefit from the higher cost plan, the subscriber is billed according to the higher cost plan. But in months or billing periods when the consumer would not benefit from the higher cost plan, the consumer is not billed according to the higher cost plan as long as the subscriber subscribes to the lower cost plan. Accordingly, one of ordinary skill in the art would not look to Whewell. Additionally, it is respectfully submitted that if it were obvious to charge a

flat fee up to a first threshold and a rate per minute for service used exceeding the threshold level in order to increase consumer loyalty as asserted by the Office Action, then it is respectfully submitted that Money would have disclosed doing so.

For at least the foregoing additional reasons, **claim 36** is not anticipated and is not obvious in light of the three documents including Money, Dahm and Whewell.

Claims 43 and **44** were rejected under 35 USC §103(a) as being unpatentable over a combination of three documents including Money, Dahm and Ruckart. However, Ruckart discusses a method and system for offering bundled goods and services and is unrelated to charging for airtime, even if some of bundled services are related to cellular service. The discounts of Ruckart are for monthly subscriptions and **not for airtime above a threshold**. Accordingly, even in combination with Money and Dahm, Ruckart does not disclose or suggest a graduated biller that is operative to apply a first discounted billing rate based on a function of the calling plan subscription cost of the subscriber that generates a larger discount for higher cost subscription plans as recited in **claim 43** or a graduated biller that is operative to apply a first discounted billing rate based on a function of the time period the subscriber has been a customer and of the calling plan subscription cost of the subscriber as recited in **claim 44**.

Additionally, there is no motivation in the art to combine aspects of an online churn reduction and loyalty system of Dahm with aspects of methods and systems for offering bundled goods and services of Ruckart with the method and system for real time tiered rating of communication services of Money. It is respectfully submitted that the assertion that it would be obvious to do so to "determine a discounted billing rate based on the price of a product is selected in order to provide a variable pricing structure that rewards customers for choosing a greater number of goods and services" is unintelligible and does not even suggest a motivation. Accordingly, the only motivation for making the suggested combination is information gleaned from the present application. Therefore, the rejection of **claims 43** and **44** can only be based on impermissible hindsight reasoning and represent **clear errors** of the Office Action.

For at least the foregoing reasons, **claims 43** and **44** are not anticipated and are not obvious in light of Money, Dahm and Ruckart.

Claims 41 and **45** were rejected under 35 USC §103(a) as being unpatentable over Money in view of Dahm and further in view of the CCP answering

service pricelist. In apparent reference to **claim 41**, the Office Action stipulates that Money and Dahm do not disclose or suggest applying a continuously increasing discounted billing rate to a portion of a total quantity of consumed airtime above a threshold and apparently relies on CCP for this disclosure.

However, CCP is unrelated to airtime. Additionally, CCP can only be fairly construed as disclosing a first discount and a second discount. Therefore, CCP cannot be construed as disclosing a continuously increasing discounted billing rate (e.g., see Fig. 2, reference numeral 322 of the present application). Additionally, **the Office has not met its burden** of presenting a *prima facie* case of obviousness. There is no motivation in the art to combine the answering service price list of CCP with Money. If there had been a motivation to make such a combination, Money would have made the combination.

With regard to **claim 45**, the Office Action stipulates that Money does not disclose determining a time period the subscriber has been a customer and determining the first discounted billing rate based on a function of the time period the subscriber has been a customer that generates a larger discount for longer customer time periods and appears to rely on Dahm for this disclosure.

However, as indicated above, Dahm only offers discounted plans before competitors offer discounted plans if subscribers commit to long contract periods. It is respectfully submitted that Dahm, even in combination with Money and CCP, does not disclose or suggest a continuously increasing discounted billing rate (e.g., Fig. 2, 322 of the present application) that is a function of the time period the subscriber has been a customer that generates larger discounts for longer customer time periods and the amount of airtime consumed in a first airtime category, as recited in **claim 45**.

For at least the foregoing additional reasons, **claims 41** and **45** are not anticipated and are not obvious in light of Money, Dahm and CCP.

Claims 46 and **47** were rejected under 35 USC §103(a) as being unpatentable over the combination of four documents including Money, Dahm, CCP and Ruckart.

In this regard, it is respectfully submitted that **the Office has not met its burden** of presenting a *prima facie* case of obviousness.

For example, the Office Action does not even present an assertion that it would have been obvious to combine the subject matter from all four of the cited documents.

Instead, the Office Action asserts that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Money and Dahm with Ruckart. Additionally, the assertions that it would have been obvious to combine Money, Dahm and Ruckart "to determine a discounted billing rate based on the price of a product is selected in order to provide a variable pricing structure that rewards customers for choosing a greater number of goods and services" is unclear.

Furthermore, even if it would have been obvious to combine Money and Dahm with Ruckart to reward customers for choosing a greater number of goods and services, **claims 46** and **47** do not recite rewarding customers for choosing a greater number of goods and services. The claims of the present application are unrelated to bundling (i.e., the subject matter of Ruckart). Accordingly, one of ordinary skill in the art would not look to Ruckart in order to address the problem addressed by the present application.

For any or all of the foregoing additional reasons, the rejections of **claims 46** and **47** represent **clear errors** of the Office Action and **claims 46** and **47** are not anticipated and are not obvious in light of Money, Dahm, CCP and Ruckart.

Telephone Interview

In the interests of advancing this application to issue, the Applicants respectfully request the Examiner telephone the undersigned to discuss the foregoing or any suggestions the Examiner might have to place the case in condition for allowance.

CONCLUSION

Claims 1-47 remain in the application. **Claims 16, 18, 45** and **47** have been amended. None of the amendments require a new search. Withdrawal of the finality of the rejection is requested. For at least the foregoing reasons, the application is condition for allowance. Accordingly, an early indication thereof is respectfully requested.

Respectfully submitted,

Fay Sharpe LLP

March 18, 2008
Date

Joseph D. Dreher, Reg. No. 37,123
Thomas Tillander, Reg. No. 47,334
1100 Superior Avenue
Seventh Floor
Cleveland, Ohio 44114-2579
216-861-5582

CERTIFICATE OF MAILING OR TRANSMISSION

Under 37 C.F.R. § 1.8, I certify that this Amendment is being

☐ deposited with the United States Postal Service as First Class mail, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

☒ transmitted to the USPTO by electronic transmission via EFS-Web on the date indicated below

☐ deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

Express Mail Label No.:	**Signature** Roseanne Giuliani
Date	**Printed Name**
March 18, 2008	**Roseanne Giuliani**

N:\LUTZ\200265\MAT0005462V001.docx